UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW); and THOMAS BODE, BRUCE EATON, WILLIAM BURNS, PETER ANTONELLIS, and LARRY PRESTON, for themselves and others similarly-situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL INC.,

Defendant.
_______________________________________/

Case No. 2:11-cv-14036
Class Action

U.S. District Chief Judge
Denise Page Hood

RETIREES' MOTION FOR PARTIAL SUMMARY JUDGMENT AND PERMANENT INJUNCTION BARRING HONEYWELL FROM ENDING RETIREE HEALTHCARE

BRIEF IN SUPPORT

CERTIFICATE OF SERVICE

William Wertheimer (P26275)
Law Office of William Wertheimer
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200
billwertheimer@gmail.com

Stuart M. Israel (P15359)
John G. Adam (P37205)
Legghio & Israel, P.C.
306 South Washington, Suite 600
Royal Oak, MI 48067
(248) 398-5900
israel@legghioisrael.com
jga@legghioisrael.com

Attorneys for Plaintiffs

RETIREES' MOTION FOR PARTIAL SUMMARY JUDGMENT AND PERMANENT INJUNCTION BARRING HONEYWELL FROM ENDING RETIREE HEALTHCARE

Honeywell notified the 4,700 class members that it plans to end all retiree healthcare on July 1, 2017. Plaintiff-retirees and class representatives Thomas Bode, Bruce Eaton, William Burns, Peter Antonellis, Larry Preston, and plaintiff UAW move for partial summary judgment and a permanent injunction, pursuant to Fed. R. Civ. P. 56 and 65.

This motion is limited to enforcement of explicit promises in the 2003, 2007, and 2011 collective bargaining agreements. The CBAs promise post-expiration Honeywell retiree healthcare contributions which "shall not be less than" specified cap amounts.

The Court need only address a single paragraph in each of the three CBAs to resolve this motion and need not now resolve the myriad other CBA issues in other Rule 56 motions. R49, R77, and R97.

Concurrence was sought from Honeywell on May 8 but not obtained.

In light of Honeywell's July 1 termination plan, we ask the Court to set an accelerated hearing schedule.

This motion is supported by the attached brief and exhibits.

s/John G. Adam

William Wertheimer (P26275)
Law Office of William Wertheimer
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200
billwertheimer@gmail.com

Stuart M. Israel (P15359)
John G. Adam (P37205)
Legghio & Israel, P.C.
306 South Washington, Suite 600
Royal Oak, MI 48067
(248) 398-5900
israel@legghioisrael.com
jga@legghioisrael.com

May 10, 2017

Attorneys for Plaintiffs

BRIEF IN SUPPORT

TABLE OF CONTENTS

LOCAL RULE 7.1 STATEMENT OF ISSUE ii

LOCAL RULE 7.1 STATEMENT OF APPROPRIATE AUTHORITIES iii

TABLE OF AUTHORITIES v

INTRODUCTION 1

SUMMARY OF FACTS 2

1. This lawsuit. 2
2. Honeywell promised post-expiration retiree healthcare at not "less than" CBA-specified cap amounts. 2
3. Honeywell plans to end retiree healthcare on July 1, 2017. 4
4. This motion 4

ARGUMENT 4

I. THE LAW: ORDINARY CONTRACT PRINCIPLES, CBAs, AND RETIREE HEALTHCARE PROMISES 4

II. THE CBAs PROMISE POST-EXPIRATION HEALTHCARE AT NOT "LESS THAN" THE SPECIFIED CAP AMOUNTS 5

A. Explicit CBA Promises 5

1. "Shall not be less than." 5
2. "Mandatory subject" in "all future" negotiations. 6
3. "Notwithstanding" future negotiations. 6
4. "Protection of retiree healthcare." 7

B. Post-Expiration Performance Confirms Vested Retiree Healthcare 7

C. Other Courts Permanently Enjoined Honeywell From Ending Promised Retiree Healthcare 9

CONCLUSION 10

LOCAL RULE 7.1 STATEMENT OF ISSUE

Whether, the Court should grant partial summary judgment and a permanent injunction barring Honeywell from ending healthcare for the 4,700 retiree families on July 1, 2017, **where** the 2003, 2007, and 2011 CBAs explicitly promise post-expiration retiree healthcare that "shall not be less than" the CBA-specified cap amounts.

LOCAL RULE 7.1 STATEMENT OF APPROPRIATE AUTHORITIES

1. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

   Fed. R. Civ. P. 56(a)

2. Collectively-bargained retiree healthcare promises are governed by "the ordinary principles of contract law" consistent with "federal labor policy"; "the parties' intentions control."

   ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926, 933, 935-936 (2015)**

   ***Tackett v. M&G Polymers USA, LLC*, 811 F.3d 204, 209 (6th Cir. 2016)**

3. CBAs may "vest lifetime benefits for retirees" with "express or implied" promises that "benefits continue after the agreement's expiration"; CBA expiration does not end "obligations already fixed under the contract but as yet unsatisfied"; rights "accrued or vested" will "as a general rule, survive [CBA] termination."

   ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926, 933, 937 (2015)**

   ***Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 203, 206-207 (1991)**

   ***Tackett v. M&G Polymers USA, LLC*, 811 F.3d 204, 209 (6th Cir. 2016)**

4. Breaking promises of collectively-bargained lifetime retiree healthcare breaches the CBA and violates LMRA and ERISA.

   Labor Management Relations Act (LMRA) Section 301, 29 U.S.C. §185

   Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq*.

5. A permanent injunction preserving promised healthcare, and barring unilateral changes is an appropriate remedy for breach of collectively-bargained retiree healthcare promises.

***UAW v. Kelsey-Hayes Co*., 130 F.Supp.3d 1111, 1121-1122 (E.D. Mich. 2015), *aff'd* __ F.3d __, 2017 WL 1404189 (6th Cir. 4/20/17)**

***Hargrove v. EaglePicher*, 852 F.Supp.2d 851, 857 at ¶¶27-28 (E.D. Mich. 2012)**

Fed. R. Civ. P. 65(d)

6. Courts permanently enjoined Honeywell from implementing planned 2017 termination of healthcare promised to other UAW-represented retirees.

Kelly v. Honeywell International, Inc.*, 2017 WL 522163 (D. Conn. 2/8/17), *app. pending

Fletcher v. Honeywell International, Inc.*, 2017 WL 778387 (S.D. Ohio 2/28/17), *app. pending

TABLE OF AUTHORITIES

CASES

Alabama v. North Carolina, 560 U.S. 330 (2010).....8

Allied Chemical Workers v. PPG Co., 404 U.S. 157 (1971).....7

Bower v. Bunker Hill, 725 F.2d 1221 (9th Cir. 1984).....8

Brooklyn Life Ins. Co. v. Dutcher, 95 U.S. 269 (1877).....8

Consolidated Rail v. Railway Labor Ass'n, 491 U.S. 299 (1989).....5

Cooper v. Honeywell International, Inc., 2017 WL 213997 (W.D. Mich.), *app. pending* (Ex. 10).....9

Fletcher v. Honeywell International, Inc., 2016 WL 6780020 (S.D. Ohio 11/15/16) ("*Fletcher* I") (Ex. 11).....6

Fletcher v. Honeywell International, Inc., 2017 WL 778387 (S.D. Ohio 2/28/17) ("*Fletcher* II"), *app. pending* (Ex. 8).....iv, 6, 9

Hargrove v. EaglePicher Corp., 852 F.Supp.2d 851 (E.D. Mich. 2012).....iv

Kelly v. Honeywell International, Inc., 2017 WL 522163 (D. Conn. 2/8/17), *app. pending* (Ex. 9).....iv, 9

Litton Financial Printing Div. v. NLRB, 501 U.S. 190 (1991).....iii, 5

M&G Polymers USA, LLC v. Tackett, 135 S.Ct. 926 (2015) ("*Tackett*")iii, 5, 7, 8, 10

Mastrobuono v. Shearson Lehman, 514 U.S. 52 (1995).....6

Moore v. Menasha Corp., 690 F.3d 444 (6th Cir. 2012), *cert. denied* 133 S.Ct. 1643 (2013).....7

Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010).....5

Tackett v. M&G Polymers USA, LLC, 811 F.3d 204 (6th Cir. 2016) ("*Tackett* III").....iii, 5, 10

UAW v. Kelsey-Hayes Co., 130 F.Supp.3d 1111 (E.D. Mich. 2015), *aff'd* __ F.3d __, 2017 WL 1404189 (6th Cir. 4/20/17).....iv

USWA v. American Mfg. Co., 363 U.S. 564 (1960) 7

USWA v. Connors Steel, 855 F.2d 1499 (11th Cir. 1988) 8

Weimer v. Kurz-Kasch, 773 F.2d 669 (6th Cir. 1985) 8

STATUTES

Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq.* .... iii, 2, 7

Labor Management Relations Act (LMRA) Section 301, 29 U.S.C. §185......... iii, 2

RULES

Federal Rule of Civil Procedure 56 .... iii, 1

Federal Rule of Civil Procedure 65(d).. iv

Federal Rule of Evidence 801(d)(2) 8

INTRODUCTION

Honeywell notified the 4,700 class members that it plans to end healthcare for retiree families on July 1, 2017. This motion is limited to enforcement of promises in the 2003, 2007, and 2011 collective bargaining agreements. The retirees request partial summary judgment enforcing the explicit promises that post-expiration Honeywell healthcare contributions "shall not be less than" CBA-specified cap amounts.

The Court need only address a single paragraph in each of the three CBAs to resolve this motion and need not now resolve the myriad other CBA issues in the pending Rule 56 motions. R49, R77, and R97.

Ahead, we review the law governing collectively-bargained retiree healthcare. **(Argument I)**. Next, we show that the CBA terms—the post-expiration promises, the "shall not be less than," "mandatory subject" in "all future" negotiations, "notwithstanding" future negotiations, and "protection of retiree healthcare" terms——prove lifetime retiree healthcare at the least at the CBA-specified cap amounts. **(Argument II)**.[1]

[1] For purposes of this motion only, we assume that the CBAs cap Honeywell healthcare obligations and that the caps apply to all who retired before, or during, the 2003, 2007, and 2011 CBAs.

SUMMARY OF FACTS

1. This lawsuit. The certified class of 4,700 retirees brought this ERISA/LMRA lawsuit to enforce family healthcare promises in multi-plant collective bargaining agreements between Honeywell and UAW.

2. Honeywell promised post-expiration retiree healthcare at not "less than" CBA-specified cap amounts. In the 2003, 2007, and 2011 CBAs, Honeywell promised that after CBA-expiration Honeywell's "contribution for health care coverage" for "present and future retirees" and families "shall not be less than" the CBA-specified cap amounts. Ex. 1 at 61-62; Ex. 2 at 122-124.

The cap amounts are set by CBA formula at: **(1)** "the actual amount of the Company's retiree health care contribution in 2007" or **(2)** "the Company actuary's 2003 estimate of the Company's retiree health care contribution in 2007"—"whichever is greater." Ex. 1 at 61; Ex. 2 at 122-123. According to Honeywell, option 2 is "greater" and Honeywell annual capped contribution obligations are $8,470 (single) and $20,531 (family) for each pre-Medicare retiree and $4,207 (single) and $10,198 (family) for each Medicare retiree. Ex. 4.

The CBAs make retiree healthcare a "mandatory subject of bargaining" for "all future" negotiations and promise that "notwithstanding such negotiations" Honeywell's contributions "shall not be less than" the CBA-specified cap amounts. Ex. 1 at 61; Ex. 2 at 122.

The 2003 CBA text states (Ex. 1 at 61):

> **Part VI—UAW-Honeywell Master Agreement on Retiree Health Care Costs and Union Right to Bargain for Post-Retirement Health Care Benefits**
>
> During the 2003 UAW Honeywell Master Negotiations, the Company and the Union shared a strong concern regarding the protection of retiree health care benefits. In 2003 UAW Honeywell Master Negotiations the Company and Union agree as follows:
>
> - The subject of health care benefits for present and future retirees, their dependents, and surviving spouses, including the limit described below on Company retiree health care contributions, will be a mandatory subject of bargaining for 2007 UAW Honeywell Master Negotiations and for all future UAW Honeywell Master Negotiations.
>
> - The Company will pay the cost of retiree health care coverage during the term of the 2003 UAW Honeywell Master Agreement as described in its Insurance Section. The Company's contribution for health care coverage after 2007 for present and future retirees, their dependents, and surviving spouses covered under the UAW Honeywell Master Agreement shall not be less than (A) the actual amount of the Company's retiree health care contribution in 2007 or (B) the Company actuary's 2003 estimate of the Company's retiree health care contribution in 2007, whichever is greater. As stated above, this limit will be a mandatory subject of bargaining for 2007 UAW Honeywell Master Negotiations and for all future UAW Honeywell Master Negotiations. Notwithstanding such negotiations, the Company's contributions shall not be less than the greater of: (A) the actual amount of the Company's retiree health care contribution in 2007 or (B) the Company actuary's 2003 estimate of the Company's retiree health care contribution in 2007.
>
> - The above limit on Company retiree healthcare contributions will not apply to any year prior to calendar year 2008.

The 2007 CBA moved the cap effective date, first set by the 2003 CBA, from 2008 to 2012, eight months after the 2007 CBA expired. Ex. 2 at 123. The 2011 CBA continued the 2007 cap language. See Ex. 3.

3. Honeywell plans to end retiree healthcare on July 1, 2017. The 2011 CBA—the last CBA that promised retiree healthcare—expired on May 3, 2016. Ex. 3. When there was no new CBA, Honeywell locked out employees and ended their healthcare on May 31, 2016 (Ex. 5), but continued retiree healthcare. In October 2016, Honeywell sent retirees "confirmation" of "Honeywell-sponsored health care coverage for 2017" (Ex. 6), but six months later Honeywell Vice-President of Compensation and Benefits Christopher Gregg wrote retirees that Honeywell would end their healthcare on July 1. Ex. 7.

4. This motion. We show ahead—based on the explicit 2003, 2007, and 2011 CBA promises and the "ordinary principles of contract law"—that Honeywell is obligated to make retiree healthcare contributions at not "less than" the CBA-specified cap amounts and that plaintiffs are entitled to partial summary judgment and a permanent injunction to preserve the promised healthcare.

ARGUMENT

I. THE LAW: ORDINARY CONTRACT PRINCIPLES, CBAs, AND RETIREE HEALTHCARE PROMISES

CBA retiree healthcare promises are assessed under the "ordinary principles of contract law" consistent with "federal labor policy." *M&G Polymers USA, LLC* *v. Tackett*, 135 S.Ct. 926, 933, 935 (2015) ("*Tackett*"). The "parties' intentions control." *Id*., quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010).

CBAs may "vest" retiree healthcare with "explicit terms" promising that "benefits continue after the agreement's expiration." *Tackett*, 135 S.Ct. at 937, quoting *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 207 (1991). *Litton* holds, too, that post-expiration rights may rest on "implied" CBA terms. 501 U.S. at 203. So do *Consolidated Rail v. Railway Labor Ass'n*, 491 U.S. 299, 311 (1989) ("implied" terms) and *Tackett v. M&G Polymers, USA, LLC*, 811 F.3d 204, 209 (6th Cir. 2016) ("*Tackett* III") (healthcare vesting may be "implied").

II. THE CBAs PROMISE POST-EXPIRATION HEALTHCARE AT NOT "LESS THAN" THE SPECIFIED CAP AMOUNTS

A. Explicit CBA Promises

The 2003, 2007, and 2011 CBAs promise retiree healthcare vested at CBA-specified cap amounts. Ex. 1 at 61; Ex. 2 at 122-123.

1. "Shall not be less than." The CBAs promise post-expiration Honeywell retiree healthcare contributions which "shall not be less than" the CBA-specified cap amounts (which range between $4,207 and $20,531 annually, depending on Medicare-eligibility and single or family coverage, Ex. 4). This is vesting language.

See *Fletcher v. Honeywell International, Inc.*, 2016 WL 6780020 at *10 (S.D. Ohio 11/15/16) ("*Fletcher* I") (Ex. 11) (caps effective after CBAs expired demonstrate an "implied intent to vest lifetime retiree healthcare") and *Fletcher v. Honeywell International, Inc.*, 2017 WL 778387 at *13 (S.D. Ohio 2/28/17) ("*Fletcher* II") (Ex. 8) (cap which did not "take effect until after the CBA expired lends further credence to [retirees'] claim that these were lifetime benefits").

2. "Mandatory subject" in "all future" negotiations. By making cap amounts a "mandatory subject" for "all future" negotiations, the CBAs reflect agreement that the promised healthcare continues past CBA expiration. The "mandatory subject" promise permits UAW to make future proposals that Honeywell increase the caps while ensuring that Honeywell healthcare contributions "shall not be less than" CBA-specified amounts. If Honeywell retiree obligations ended at CBA expiration, the "mandatory subject" and "shall not be less than" promises governing post-expiration events would be superfluous—and no CBA terms should be rendered superfluous. See *Mastrobuono v. Shearson Lehman*, 514 U.S. 52, 63 (1995) (a "cardinal principle of contract construction" is to "give effect" to all terms and "render them consistent with each other").

3. "Notwithstanding" future negotiations. The CBA guarantees of post-expiration contributions that cannot be reduced by "future" negotiations also show vesting. See *Allied Chemical Workers v. PPG Co.*, 404 U.S. 157, 182 n.20

(1971) ("vested retirement rights may not be altered without the pensioner's consent") and *Moore v. Menasha Corp.*, 690 F.3d 444, 450 (6th Cir. 2012), *cert. denied* 133 S.Ct. 1643 (2013) (citation omitted) (vested healthcare is "forever unalterable").

4. "Protection of retiree healthcare." Vesting is confirmed by the parties' explicit "strong concern" for and "shared" purpose to ensure the "protection of retiree healthcare benefits." See *USWA v. American Mfg. Co.*, 363 U.S. 564, 567 (1960) ("special heed should be given to the context in which [CBAs] are negotiated" and the CBAs' "purpose") and 29 U.S.C. §1001(b) (ERISA's purpose is "to protect…participants in employee benefit plans and their beneficiaries").

In short, to quote *Tackett*, 135 S.Ct. at 937, the Honeywell CBAs contain "explicit terms" that retiree healthcare "benefits continue after the agreement's expiration," *i.e.*, at not "less than" the CBA-specified cap amounts.

B. Post-Expiration Performance Confirms Vested Retiree Healthcare

Honeywell performance—continuing retiree healthcare during a lockout when no CBA promising retiree healthcare was in effect and *after* the last CBA promising retiree healthcare expired on May 3, 2016—is what *Tackett* calls "known customs" supported by "record evidence." 135 S.Ct. at 935. What

Honeywell actually did is a FRE 801(d)(2) admission by conduct that shows vested retiree healthcare. See, *e.g.*, **(1)** *Weimer v. Kurz-Kasch*, 773 F.2d 669, 676 n.6 (6th Cir. 1985) (continued retiree healthcare after CBA expired shows vesting); **(2)** *USWA v. Connors Steel*, 855 F.2d 1499, 1502 (11th Cir. 1988) (emphasis added) (it "is difficult to explain such sizable [retiree healthcare] expenditures by a non-eleemosynary, stockholder-owned institution without there being a sense of *legal obligation* to make those expenditures"); **(3)** *Bower v. Bunker Hill*, 725 F.2d 1221, 1225 (9th Cir. 1984) (citation omitted) (continued retiree healthcare after CBA expired is "objective manifestation of a party's intent" that healthcare is vested); and **(4)** *Fletcher* II at *13-14 ("Honeywell's course of conduct in continuing to provide coverage after the CBA expired provides strong support for the Court's finding that Honeywell agreed to provide lifetime retiree healthcare benefits").

Giving effect to Honeywell's performance is consistent with "ordinary principles of contract law" prescribed by *Tackett*. See, *e.g.*, *Brooklyn Life Ins. Co. v. Dutcher*, 95 U.S. 269, 273 (1877) (the "practical interpretation of an agreement by a party" is given "great weight"; "There is no surer way to find out what parties meant, than to see what they have done.") and *Alabama v. North Carolina*, 560 U.S. 330, 346 (2010) ("course of performance" is "highly significant" evidence of contractual intentions).

C. Other Courts Permanently Enjoined Honeywell From Ending Promised Retiree Healthcare

Other courts permanently enjoined Honeywell from implementing planned 2017 termination of healthcare promised other UAW-represented retirees: **(1)** *Fletcher* II (post-trial judgment and permanent injunction for Greenville, Ohio Honeywell retirees) and **(2)** *Kelly v. Honeywell International, Inc.*, 2017 WL 522163 (D. Conn. 2/8/17), *app. pending* (Ex. 9) (summary judgment and permanent injunction for Stratford, Connecticut Honeywell retirees).

See also *Cooper v. Honeywell International, Inc.*, 2017 WL 213997 (W.D. Mich.), *app. pending* (Ex. 10) (preliminary injunction in favor of Boyne City, Michigan Honeywell retirees; explicitly promised healthcare "until age 65").

Here, too, Honeywell's plan to end explicitly-promised retiree healthcare breaches the CBAs and ERISA and warrants summary judgment and a permanent injunction as in *Fletcher* II and *Kelly v. Honeywell*.

In sum, the explicit CBAs promises of unalterable post-expiration Honeywell retiree healthcare contributions—which "shall not be less than" the CBA-specified caps—*prove* lifetime healthcare.

CONCLUSION

Under the principles enumerated in *Tackett* and *Tackett* III, the CBA terms and Honeywell performance prove vested lifetime retiree healthcare which "shall not be less than" the CBA-specified amounts.

We ask the Court to grant partial summary judgment, finding that Honeywell's planned termination of retiree healthcare breaches the 2003, 2007, and 2011 CBAs and violates the LMRA and ERISA, and grant a permanent injunction requiring Honeywell to continue retiree healthcare contributions at not "less than" the CBA-specified cap amounts.

s/John G. Adam

William Wertheimer (P26275)
Law Office of William Wertheimer
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200
billwertheimer@gmail.com

Stuart M. Israel (P15359)
John G. Adam (P37205)
Legghio & Israel, P.C.
306 South Washington, Suite 600
Royal Oak, MI 48067
(248) 398-5900
israel@legghioisrael.com
jga@legghioisrael.com

May 10, 2017

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on May 10, 2017, I caused the foregoing paper to be electronically filed with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of interest participating in the CM/ECF system.

s/John G. Adam
John G. Adam